IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.51 OF 2005

M.R.Shah Transport. ... Petitioner.

vs.

Hindustan Petroleum Corporation Ltd. ... Respondent

Mr.V.V.Joglekar i/b. Pardiwala & Co., for Petitioner.

Mr.M.D.Siodia with Ms.O.S.Retiwala i/b. Rustomji & Ginwala, for Respondent.

CORAM: D.K.DESHMUKH,J.

DATED: 27th September,2005

P.C.:-

1. By this petition filed under Section 34 of the Arbitration and Conciliation Act,1996, the petitioner challenges the Award dated 4.10.2004. By the Award, the learned Arbitrator has rejected the claim made by the petitioner. The facts that are relevant and material for deciding this petition are that the Respondent-Corporation i.e. H.P.C.L alongwith two other public sector oil companies viz. Indian Oil Corporation Ltd. and Bharat Petroleum

Corporation Ltd. had floated a tender in May,1999 for movement of bulk LPG by road from any or all of the sources mentioned in the Tender to the Bottling Plants and Refineries of the Oil companies for a period of 2 years from 1.11.1999 with renewal option for another period of one year. Accordingly, the petitioner submitted its offer, its offer was accepted. On or about 14.5.1999, pursuant to the tender, the petitioner submitted the rate at Rs.1.11 per kilometer. Subsequently, the petitioner revised his rate claiming Rs.1.18 per kilometer. Admittedly, the petitioner entered into a contract and in that contract the rate mentioned was Rs. 1.11 per kilometer. The respondent company made payment at the rate of Rs.1.11 per kilometer, but the petitioner was claiming payment at the rate of 1.18 per kilometer. The oil companies have refused to make payment at the rate of Rs.1.18 per kilometer and therefore, Writ Petition no.1341 of 2000 had been filed, which was disposed of by order dated 14.8.2000. Thereafter, the matter was referred to arbitration. The main contention of the petitioner before the learned Arbitrator was that after he quoted the rate of Rs.1.11 per kilometer in the month of May,1999, in the month of October,1999 the oil prices were increased by the Oil companies and therefore, the petitioner could not have struck to the rate of Rs.1.11 per kilometer. According to the petitioner, in view of the increase in the prices of petroleum effected in the month of October,1999, the Corporation could not have held the petitioner to the rate mentioned in the contract whereby the petitioner was dis-entitled to claim any increase in the rate because of escalation in the prices of petroleum for a period of 240 days from

commencement of the contract. The learned Arbitrator has rejected the claim made by the petitioner and hence, this petition has been filed.

2. The admitted position is that during the pendency of the the Writ Petition before this Court, the petitioner has signed the contract where the rate mentioned was Rs.1.11 per kilometer. According to the petitioner, the rate quoted in the contract admittedly signed by the petitioner, is not binding on him because that contract was signed by the petitioner without prejudice to his contention that he is entitled to payment at the revised rate of Rs.1.18 per kilometer. The respondent has also accepted the Work Order which was received in its favour, after the contract was entered into and signed. Perusal of the Award shows that all the contentions of the petitioner have been considered in detail by the learned Arbitrator. The contention of the petitioner that in view of the hike in the price of the petroleum, the petitioner could not have been asked to stick to the rate of Rs.1.11/- per kilometer as has been dealt with by the learned Arbitrator. The learned Arbitrator has found that the petitioner had earlier entered into a contract with the Oil companies where because of the escalation clause the petitioner was paid at a much higher rate than Rs.1.11 per kilometer, but still in order to get the contract, he quoted rate of Rs.1.11 per kilometer. The learned Arbitrator has pointed out that the rate of Rs.1.11 per kilometer which was quoted by the petitioner was lower than the rate at which the petitioner was being paid under the other contracts. The rate under the other contract was arrived at considering the prevalent oil prices. The learned

Arbitrator, in my opinion, has considered the matter properly and no exception can be taken to the reasons given by the learned Arbitrator in the Award.

3. So far as the contention that the petitioner had signed the contract without prejudice to its rights and contentions is concerned, the petitioner had signed the contract without prejudice to its rights and contention in the writ petition. Perusal of the order passed in the Writ Petition shows that the Court has declined to entertain the petition because it involves disputed questions of fact. Once the petition was rejected, the condition subject to which the contract was signed ceases to exist. It is further to be seen that in the rejoinder that was filed before the learned Arbitrator, the petitioner contended that he has signed the contract under undue pressure applied by the Respondent. However, no particulars of the pressure have been given and there is no evidence led. In my opinion, the petitioner having itself voluntarily quoted rate of Rs.1.11 per kilometer knowingly fully well that he will be bound by that rate for the period of 240 days after having solemnly signed the contract, the petitioner cannot claim the revised rate. In any case, the view that has been taken by the Arbitral Tribunal cannot be said to be a view which is impossible to be taken in the facts and circumstances of the case. It is now a settled law that if court finds that the view that has been taken by an Arbitrator is a possible view, then Court cannot interfere with the Award in its jurisdiction under Section 34 of the Arbitration and Conciliation Act,1996. In this view of the matter therefore, I do not find any reason to interfere with the impugned Award. The petition therefore, is

dismissed. The petitioner is directed to pay cost of this petition to the respondent as incurred by the respondent.